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15
 16 **UNITED STATES DISTRICT COURT**
 17 **DISTRICT OF NEVADA**

18 In re:

19 THE RHODES COMPANIES, LLC, aka
 20 "Rhodes Homes," et al.,

21 Reorganized Debtors

22 Case No. 2:10-cv-02101-GMN

23 Bankruptcy Case No.: 09-14814-LBR
 (Jointly Administered)

24
 25 **STIPULATION AND ORDER**
DISMISSING APPEAL WITHOUT
PREJUDICE

26 JAMES M. RHODES,

Appellant,

v.

27 THE RHODES COMPANIES, LLC, aka
 28 "Rhodes Homes," et al., Reorganized
 29 Debtors,

30 Appellee.

1 Pursuant to Rule 8001(c)(2) of the Federal Rules of Bankruptcy Procedure, Appellant
 2 James M. Rhodes (“Rhodes”), through counsel, Fabian & Clendenin, and the Appellee, the
 3 reorganized debtors (collectively, the “**Reorganized Debtors**”), through counsel, Kolesar &
 4 Leatham, Chtd. and Akin Gump Strauss Hauer & Feld LLP, respectfully submit this Stipulation
 5 and Order dismissing the appeal in this matter, without prejudice (the “**Stipulation**”). Rhodes
 6 and the Reorganized Debtors are collectively referred to herein as the “**Parties**.” The Parties
 7 stipulate and agree as follows:

8 WHEREAS, on July 17, 2009, Rhodes filed proof of claim No. 814-33 (the “**Proof of**
 9 **Claim**”) in the bankruptcy case entitled *The Rhodes Companies, LLC, aka “Rhodes Homes,” et*
 10 *al.*, Bankruptcy Case No. 09-14814 (the “**Bankruptcy Case**”), seeking \$10,598,000 for: (i) the
 11 reimbursement of taxes (the “**Taxes**”) paid by Rhodes for the 2006 tax year in the amount of
 12 \$9,729,151 (the “**Tax Claim**”); and (ii) \$868,849 advanced to Greenway Partners, LLC (the
 13 “**Greenway Partners Claim**” and, together with the Tax Claim, the “**Claims**”).

14 WHEREAS, on May 27, 2010, the Reorganized Debtors filed an objection (the
 15 “**Objection**”) in the Bankruptcy Case to the Proof of Claim. Additionally, the Reorganized
 16 Debtors indicated that contemporaneously with the filing of their Objection they were amending
 17 their schedules and statements to remove certain scheduled claims (the “**Scheduled Claims**”).

18 WHEREAS, on June 17, 2010, Rhodes filed an opposition (the “**Opposition**”) to the
 19 Objection in the Bankruptcy Case.

20 WHEREAS, on or about August 24, 2010, the United States Bankruptcy Court for the
 21 District of Nevada (the “**Bankruptcy Court**”) held a status conference during which the Parties
 22 agreed that this matter should be bifurcated with respect to: (1) Rhodes’ entitlement to the Tax
 23 Claim; and (2) discovery, if necessary, to support the amount of the Tax Claim, allowance of the
 24 Greenway Partners Claim, and all issues regarding the Scheduled Claims.

25 WHEREAS, on November 4, 2010, the Bankruptcy Court held a hearing on the
 26 Objection to the Tax Claim.

1 WHEREAS, on November 16, 2010, the Bankruptcy Court entered its *Order Sustaining*
2 *Reorganized Debtors' Objection to James Rhodes' Entitlement to the Tax Claim Found in Proof*
3 *of Claim No. 814-33* (the "Order").

4 WHEREAS, on November 30, 2010, Rhodes filed: (1) *James Rhodes' Notice of Appeal*
5 from the Order; and (2) *James Rhodes' Statement of Election to Appeal to the United States*
6 *District Court for the District of Nevada* (collectively, the "Appeal"), commencing the above-
7 captioned case.

8 WHEREAS, the Bankruptcy Court has scheduled a hearing for July 26, 2011 on the
9 remaining claims in this matter, including allowance of the Greenway Partners Claim and the
10 issues relating to the Scheduled Claims.

11 WHEREAS, the Parties desire to dismiss the Appeal without prejudice in order to obtain
12 a final adjudication of the entire matter. As a result, the Parties have agreed to the following as
13 set forth below.

14 **IT IS HEREBY STIPULATED AND AGREED**, by and between the undersigned
15 counsel for the Parties, as follows:

16 1. The Order of the Bankruptcy Court from which Rhodes appeals is not a final,
17 appealable order.

18 2. The Appeal is hereby dismissed in its entirety, without prejudice, each of the
19 parties to bear their own attorney fees and costs.

20 3. By dismissal of the Appeal, Rhodes shall not be deemed to have waived the right
21 to timely file a new notice of appeal with respect to the Tax Claim upon the issuance by the
22 Bankruptcy Court of a final, appealable order, and consistent with applicable law.

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ORDER

IT IS SO ORDERED this 18th day of April, 2011.

Gloria M. Navarro
United States District Judge

Prepared and respectfully submitted by:

FABIAN & CLENDENIN, P.C.

**AKIN GUMP STRAUSS HAUER & FELD
LLP**

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